

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1398 of 2004
With
CIVIL APPLICATION NO.5315 OF 2004
in
SPECIAL CIVIL APPLICATION No 8100 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MUNICIPAL NOKARIYAT MANDAL

Versus

MUNICIPAL CORPORATION OF THE CITY OF BHAVNAGAR

Appearance:

1. LETTERS PATENT APPEAL No. 1398 of 2004
MR SK JHAVERI for Appellant No.
MR RM CHHAYA for Respondent No. 1
MR.S.P.HASURKAR, learned AGP, for Respondent No. 2-3
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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 10/08/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Admit. Mr.R.M.Chhaya, learned advocate, waives service of notice of appeal on behalf of respondent No.1 Bhavnagar Municipal Corporation. Mr.S.P.Hasurkar, learned AGP, waives service of notice of appeal on behalf of respondent Nos.2 and 3. By consent of the counsel appearing in the matter, the Appeal is fixed forthwith.

2. The present appeal is filed by the appellant original petitioner Municipal Nokariyat Mandal challenging the order passed by the learned single Judge dated 9.7.2004 in Special Civil Application No.8100 of 2004 only in respect of not protecting by way of granting ex parte relief prayed for in paragraph 7(C) of the petition while issuing notice, which was made returnable on 9.8.2004. While filing this Letters Patent Appeal, the appellant original petitioner has also annexed the copy of the order passed by the learned single Judge and the copy of the petition filed by the appellant petitioner being Special Civil Application No.8100 of 2004 with annexures attached to the said petition.

3. In the petition, the petitioner has prayed for relief for issuance of writ of mandamus or a writ in the nature of mandamus or any other appropriate writ or direction by seeking to take action against the respondent Municipal Commissioner and or other officials concerned to take effective steps for violation of section 25U and Section 29 of the I.D.Act, 1947 and directing the appropriate authority to grant sanction as contemplated under section 34 of the I.D.Act and to direct the competent official to immediately without any further delay launch requisite prosecution and see that the respective employees get their dues without any delay. It is also prayed that the respondent Corporation be directed to determine the amount to which all the employees are entitled and the said amount be paid with interest at the rate of 18% from 2.7.1999 in view of the Award passed in Reference (IT) No.244 of 1991 and also interest in respect of the award passed in Reference (IT) No.71 of 1991 and the Collector, Bhavnagar be directed to recover the amounts due without further delay immediately by attaching the Bank Account of the Corporation if necessary by taking any other coercive or other steps available under law so that the employees receive their due without any delay. The petitioner has also prayed for consequential reliefs in the main petition and so far

as the relief, which has been pressed for by the petitioner ex parte before the learned single, is concerned, the learned single Judge has referred to in his order. The said petition was affirmed by Shri G.R.Raval, President of the Municipal Nokariyat Mandal before the Notary dated 8.7.2004. As highlighted in the said petition that the Reference (IT) No.244/91 was allowed by the Industrial Tribunal, Bhavnagar on 26.4.1999. The said Award was published as per the Notification issued by the Labour Commissioner on 2.6.1999. Thereafter, the petitioner has made complaint before the Government Labour Officer, Bhavnagar for breach of the Award passed in Reference (IT) No.244/99 by not complying with said Award and for unfair labour practice by the Corporation. On 1.6.2000 the concerned workmen to the said award has filed Application being Recovery Application Nos.123 of 2000 to 155 of 2000 before the Labour Court arising from the Award passed in Reference (IT) No.244/91. Another Reference (IT) No.71/91 preferred by the petitioner was allowed by the Industrial Tribunal and the award was passed in the said Reference on 3.7.2000. In the said Reference, the Notification was issued by the Labour Commissioner and published the Award on 19.3.2001. As per the Award passed in Reference (IT) No.71/91, 32 workmen were preferred Recovery Applications being Recovery Applications Nos.109/2003 to 140/2003 before the Labour Court on 21.4.2003. Similarly, a complaint was made before the Labour Officer, Bhavnagar for breach of the Award passed in Reference (IT) No.71/91 by not complying the said Award by the Corporation by unfair labour practice on 13.8.2001. The award passed in Reference (IT) No.244/99 was challenged by the respondent Corporation as well as the Award in Reference (IT) No.71/91 by preferring Special Civil Application Nos.10184 of 2003 and 10187 of 2003 respectively. So far as the Special Civil Application No.10184/2003 is concerned, which is arising from Reference (IT) No.244/91, the High Court had issued rule, however refused interim relief and Special Civil Application No.10187 of 2003 arising from Reference (IT) No.71/91 is concerned, the High Court has dismissed the said petition. The Recovery Applications were filed by 32 workmen employees under Section 33C(1) of the I.D. Act being Recovery Application Nos.109 of 2003 to 140 of 2003 in which the Labour Court has passed order on 12.1.2004 and Recovery Applications being Recovery Application Nos.123 of 2000 to 155 of 2000 and Recovery Application Nos.164 of 2000 to 166 of 2000 and 169 of 2000 to 171 of 2000 in which the Labour Court has also passed order on 13.1.2004. The Labour Court, Bhavnagar under his order

dated 27.4.2004 has issued Recovery Certificate to recover the amount by way of arrears of land revenue in an Application filed by 32 workmen i.e. in Recovery Application No.109 of 2003 and others. In respect of the Recovery Application filed by 27 workmen being Recovery Application No.123 of 2000 and others, the Labour Court has also issued Recovery Certificate to recover the amount from the respondent under land revenue code. The appellant - petitioner has issued notice on 18.5.2004 in respect of the Award passed by the Labour Court in both the References for implementation and operation of the Award. One of the workmen Shri Manharbhai Chitharbhai had also filed Recovery Application being Recovery Application No.186 of 2001 and he had died and the said Recovery Application was also allowed. The Labour Court has as per order dated 7.6.2004 issued Recovery Certificates in favour of the Collector. When the appellant petitioner has approached the High Court by way of filing Special Civil Application, petitioner has annexed the notice issued by the petitioner and the reply of the Deputy Commissioner of Labour, Rajkot and Assistant Labour Commissioner, Bhavnagar and the copy of the statement showing the details about the amount available to the respective employees as per the Recovery Certificates issued by the Labour Court.

4. As observed, that the appellant has filed Letters Patent Appeal only in respect of not granting relief in favour of the petitioner while issuing notice as per order dated 9.7.2004 and the Division Bench had issued notice as per dated 13.7.2004, which was made returnable on 16.7.2004 by permitting direct service. Thereafter, the matter appeared before the Court and as per order dated 22.7.2004 considering the request made on behalf of the Corporation as the Corporation was considering for making payment, the court has adjourned the matter by granting time upto 2.8.2004 and the Court has observed that fixed deposit to the extent of Rs.75 lacs will not be disturbed by the Corporation till the next date of hearing. Thereafter, the matter was notified for hearing before us and we have heard the counsel appearing in the matter on the point in respect of the challenge made in the Appeal by challenging the order passed by the learned single Judge. As according to the order under challenge passed by the learned single Judge, the court had issued notice in the petition filed by the appellant and the notice was made returnable on 9.8.2004. According to the learned single Judge that it will be a drastic interim relief, which can not be granted by way of ad interim relief at this stage without giving opportunity whatsoever to the respondents and the learned single

Judge was also of the view that granting of such interim relief at the ex parte stage would amount to allowing the petition without giving any opportunity to the respondents and as the mandatory relief cannot be granted without verifying full facts.

5. Mr. Jhaveri, the learned counsel, appearing for the appellant, has placed reliance upon certain decisions in support of his case that the relief, which has been sought for, is not by way of mandatory relief and the learned single Judge was not right while not protecting even at the ad interim stage by not granting ex parte relief. He also placed reliance upon the provisions of C.P.C. as contemplated under Order 21 Rule 46, etc. However, we are not required to consider the effect of the order passed by the learned single Judge while deciding the present Letters Patent Appeal.

6. After the notice was issued in the present Appeal, Shri Mahendra Pandya, Chief Accountant of the Bhavnagar Municipal Corporation has filed affidavit dated 1.8.2004 by highlighting the financial liabilities of the Corporation and to provide amenities to the people of Bhavnagar for which the Corporation is required to utilise the fund and the liability of the Corporation to pay the outstanding amount to be paid to other public bodies/Government bodies and further highlighting the per day income received by the Corporation. As found from the reply affidavit, the Corporation has also started project of 15 MLD Filter Plant for which the Corporation is required to spend Rs.3 crores. Mr. Chhaya, learned advocate, appearing for the Corporation has also during his submission highlighted these facts and according to him that in one hand the employees of the Corporation are being received their wages regularly per month and the amount under Award for which the employees are entitled is in respect of the amount by way of arrears of their salary and as the Corporation is required to give other priorities, though the installment was sought for before the Labour Court, they could not comply with by paying amount to the employees even as suggested before the Labour Court by making payment. When the Corporation has liability to pay to public bodies/Government bodies and also to provide amenities to the people of Bhavnagar and the fund, which has been allocated and received by Corporation is for a particular project, it was not possible for the Corporation to make payment and further that even looking to the per day income of the Corporation, it is not possible for the Corporation to spare money for making payment as per the Award passed by the Labour Court and he submitted that when the High

Court has issued notice in the main petition, he will file detailed reply in the said petition by highlighting the stand of the Corporation and the stand for making payment to the employees of the Corporation. Considering these submissions and the request made by Mr.Chhaya for adjournment to ascertain from the authority to make payment as per the order passed in Recovery Applications as even before the Labour Court earlier a suggestion was made for making payment in 5 installments and Mr.Chhaya has accordingly requested us that he will ascertain and will get instructions from the Commissioner to find out how the grievance of the appellant Mandal can be resolved by making payment and accordingly as per order dated 5.8.2004 we acceded the request of Mr.Chhaya by adjourning the matter today to enable Mr.Chhaya to take positive instructions with regard to making payment to the members of the appellant Mandal and the protection, which was granted earlier, was continued by way of directing the Corporation not to disturb the Fixed Deposit to the extent of Rs.75 lacs.

7. Today when the matter was called out Mr.Jhaveri has in turn vehemently urged that though the award was passed as back as in 1999, the Corporation has not made payment and the members of the appellant Mandal have not seen the colour of the money. Not only that after the award was passed in the year 1999 they had to approach by filing application under Section 33C of the Industrial Disputes Act and in the said proceedings, the Corporation has agreed to make payment by suggesting 5 installments and inspite of that the Corporation has not complied with the statement made in the said proceedings. Mr.Jhaveri has accordingly in his submission vehemently urged that the request made by Mr.Chhaya for making payment in installments may not be entertained in view of the fact that till date the award, which was passed in the year 1999, has not been complied with and further that the Applications under Section 33C are granted.

8. Mr.Chhaya, learned advocate, appearing for the Corporation under instructions from the Commissioner has requested us that on ascertaining from the authority and the award is passed in the year 1999 and the Recovery Applications are granted, due to financial condition of the Corporation and the Corporation has liability to make payment to other public bodies/Government bodies, he requested that as per the instruction the payment as per the award will be made to the members of the appellant Mandal if this court looking to the financial position gives 10 installments and the Corporation will see that

the amount, as per the award, will be paid.

9. In light of the stand taken by the Corporation for making payment in 10 instalments, we have heard Mr. Jhaveri. He accordingly submitted that the Corporation has not fulfilled the statement made before the Labour Court even by making payment as suggested by them by clearing the arrears in 5 installments. However, according to him that if this court is inclined to consider for granting installments, he submitted that while granting instalment, the court must direct them to pay interest, which he has prayed in the main petition. According to him that the amount, which is payable by the Corporation to the members of the appellant Mandal were not paid from 1999 till date and further the Corporation is requesting for installments. In that case according to him the Corporation may be directed to pay interest at the rate of 12% per annum for delayed payment and according to him that at least the Corporation be directed to pay interest from 1.4.2004 when the Recovery Applications were granted.

10. Mr. Chhaya, learned advocate, appearing for the Corporation has submitted that even the Labour Court in its award has not granted any interest and even further as per the order passed in Recovery Applications, no interest has been awarded and it is for the first time in a petition filed by the appellant they have prayed for interest at the rate of 18%. According to Mr. Chhaya that this is not a case in which even this court while deciding this Letters Patent Appeal may grant interest, as contended in the petition.

11. In light of these submissions, it is very clear that the Labour Court has passed award in the year 1999 and till date no payment is made. Even thereafter the Recovery Applications are moved at the instance of the appellant petitioner in 2001 and the Recovery Applications were also allowed and inspite of that, the Corporation has not made any payment as per the award. Keeping in mind the fact that the petitioner has approached the learned single Judge in which court has issued notice on 9.7.2004 which was made returnable on 9.8.2004 and the court has not protected by granting ex parte relief as prayed for by the petitioner and when the Corporation has now agreed to make payment by installments, we are of the view that ends for justice will meet to pass appropriate orders while disposing of this Letters Patent Appeal so that even the main petition filed by the appellant does not survive. In our view, as per the award passed by the Labour Court in the year

1999, the appellant petitioner had moved from time to time and applications under Section 33C were filed, which were granted. The appellant petitioner has moved this court for seeking direction as observed earlier in a petition and during the pendency, the appellant petitioner has prayed for a relief in terms of paragraph 7(C) which was not granted by the learned single Judge ex parte. The Corporation is a statutory body and it has a liability to fulfill the requirements of the citizens of Bhavnagar by providing the required public amenities and facilities. It is also brought to our notice that the Corporation has also filed one Special Civil Application challenging the order of the Labour Court in which the Court had issued rule and the same is pending and no interim relief was granted. In our view, it will be in the interest of justice to accede to the request made by the Corporation for making payment of the award in 10 installments and it is also equally necessary for us that though the award is passed as back as in 1999 by not awarding interest, it is no fault of the employees and members of the appellant Mandal for not receiving the amount immediately and though the interest is not awarded by the Labour Court as well as in Recovery Applications, in our view as there is delayed payment at the hands of the Corporation, at least Corporation is required to pay interest which will be considered by us hereinafter. It is also brought to our notice that one of the employees Shri Mansukhbhai Savjibhai Sarveya, whose name has been reflected at Sr.No.27 of Annexure "B" to the main petition in Recovery Application No.146/2000 had died and the amount was already determined to be payable to said Mansukhbhai a sum of Rs.1,62,764/-. When the Corporation has agreed to make payment as per the award in 10 installments and the Corporation has to calculate the amount as per the award to be paid to the employees, which according to Mr.Jhaveri is about Rs.75 lacs in all. While granting instalment, as agreed, we direct the respondent Corporation that the first instalment of Rs.8 lacs to be deposited before the Labour Court on or before 31.8.2004. As Shri Mansukhbhai Savjibhai Sarveya had already expired, as observed earlier, and the amount is already determined to be payable to the said Mansukhbhai, while making deposit of Rs.8 lacs, we direct that the amount payable to late Shri Mansukhbhai i.e. a sum of Rs.1,62,764/- be paid to the widow directly by issuing account payee cheque after proper verification and accordingly while depositing the amount of Rs.8 lacs the Corporation has to deposit the balance amount i.e. Rs.637236 before the Labour Court. The Corporation is also directed that they shall deposit the instalment of Rs.8 lacs each regularly at the end of the subsequent

month i.e. second instalment of Rs.8 lacs is ordered to be deposited with the Labour Court by 30.9.2004 and onwards thereafter. The last instalment due and payable in the month of May 2005 is ordered to be deposited after adjusting the amount remaining to be paid to the employees. As we have acceded to the request of the Corporation for clearing the arrears of dues as per the award by granting 10 installments and admittedly the Labour Court has declared award as back is in the year 1999 and thereafter the appellant Mandal has filed Recovery Applications under Section 33C of the Act and the said Applications are also granted and as contended by Mr. Jhaveri that at least the Corporation is liable to pay interest from 1.4.2004 as the employees had not received arrears of salary as per the award till date, according to us the Corporation is required to pay interest and after giving anxious thought in the matter and when we have directed the Corporation to deposit the first instalment of Rs.8 lacs by granting time upto 31.8.2004, it will be in the fitness of things to direct the Corporation to pay interest at the rate of 4% per annum from 1.9.2004 on the entire outstanding amount and accordingly while paying interest the Corporation shall deposit the interest as calculated as per our order, as aforesaid, before the Labour Court. It is also necessary for us to pass order by directing the Labour Court that after deposit is being made by the Corporation on every month as per our order, the Labour Court shall disburse the amount in favour of the employees by issuing A/c payee cheques of individual employees on proper verification. It is also equally necessary for us that in view of the installments granted as requested by the Corporation, the Commissioner of Bhavnagar Municipal Corporation is directed to file undertaking incorporating the order indicating in respect of permitting instalment by this court and such undertaking is to be filed on or before 19.8.2004 and copy of undertaking is also ordered to be served to Mr.Jhaveri, learned senior counsel, who appeared for the appellant. The relief that has been granted in this Appeal shall operate and stand extended till the filing of the undertaking, as aforesaid.

12. Accordingly the Letters Patent Appeal is disposed off in the above terms with no order as to costs and in view of the order passed in the Appeal, Special Civil Application No.8100 of 2004 does not survive and the same is accordingly disposed off. The Application being Civil Application No.5315 of 2004 is also accordingly disposed off with no order as to costs.

(D.K.Trivedi, J)

(K.M.Mehta, J)

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